

Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1017 (Quirk-Silva) – As Introduced February 18, 2021

SUBJECT: Public restrooms: Right to Restrooms Act of 2021.

SUMMARY: Creates the Right to Restrooms Act of 2021 and requires local governments to inventory public restrooms that are available to the homeless population in their respective jurisdictions. Specifically, **this bill:**

- 1) Creates the Right to Restrooms Act of 2021.
- 2) Requires local governments to complete an inventory of public restrooms that are available to the homeless population in their respective jurisdictions for use during the COVID-19 state of emergency.
- 3) Requires local governments to provide their findings to the Office of Emergency Services (OES) not later than June 1, 2022. The report shall include all of the following:
 - a) A map of the locations of public restrooms available for use of the jurisdiction's homeless population during the COVID-19 state of emergency;
 - b) A list of the inventory of public restrooms available for use of the jurisdiction's homeless population during the COVID-19 state of emergency;
 - c) Short-term strategies for ensuring homeless populations have adequate access to restrooms during the COVID-19 state of emergency; and,
 - d) Long-term strategies for ensuring homeless populations have adequate access to restrooms.
- 4) Requires OES to compile the information provided by local governments and submit a report of the information to the Legislature, in compliance with existing law governing the submission of reports to the Legislature.
- 5) Provides the following definitions for the purposes of this bill:
 - a) "COVID-19 state of emergency" means the state of emergency proclaimed by the Governor on March 4, 2020; and,
 - b) "Local government" means a city, a county, and a city and county.
- 6) Provides a sunset date of January 1, 2024.
- 7) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Bill Summary.** This bill creates the Right to Restrooms Act of 2021 and requires local governments to complete an inventory of public restrooms that are available to the homeless population in their respective jurisdictions for use during the COVID-19 state of emergency. Local governments must provide their findings to OES by June 1, 2022. Their reports must include all of the following:
 - a) A map and list of public restrooms available for use by the jurisdiction's homeless population during the COVID-19 state of emergency;
 - b) Short-term strategies for ensuring homeless populations have adequate access to restrooms during the COVID-19 state of emergency; and,
 - c) Long-term strategies for ensuring homeless populations have adequate access to restrooms.

OES must compile the information and submit a report to the Legislature. The bill contains a sunset date of January 1, 2024.

This bill is sponsored by the author.

- 2) **Author's Statement.** According to the author, "Due to the COVID-19 pandemic, and as per the guidelines outlined by the Centers for Disease Control, washing hands can keep you healthy and prevent the spread of COVID from one person to the next. Homeless people are some of our most vulnerable neighbors in our communities across the state; they also deserve the opportunity to be healthy and wash their hands and use the restroom with some dignity and respect as we continue to deal with the COVID crisis."
- 3) **Background.** Based on the 2020 point in time count, California has the largest homeless population in the nation with 161,548 people experiencing homelessness on any given night. Nearly 114,000 of these people are unsheltered, meaning they are living outdoors and not in temporary shelters. In response to COVID-19, the federal government provided funding to immediately house people experiencing homeless at risk of contracting the virus. Funding was used to create Project Room Key and Project Home Key. Project Room Key reimbursed cities and counties to temporarily house people. Project Home Key provided funding to purchase hotels and motels and master lease housing to house people experiencing homelessness.
- 4) **Office of Emergency Services.** OES is responsible for addressing natural, technological, or manmade disasters and emergencies, and preparing the State to prevent, respond to, quickly recover from, and mitigate the effects of both intentional and natural disasters. As part of their overall preparedness mission, OES is required to develop a State Emergency Plan (SEP), State Hazard Mitigation Plan (SHMP), and maintains Standardized Emergency Management System (SEMS) and the Emergency Management Mutual Aid System (EMMA). In coordination with FEMA and local partners, OES has developed four Catastrophic Plans to augment the State Emergency Plan.

- 5) **Barriers and Solutions.** An article published in the North Carolina Law review in January of 2020 (Ron S. Hochbaum, *Bathrooms as a Homeless Rights Issue*, 98 N.C. L. REV. 205 (2020)) asserts that “one of the many barriers to accessibility of public bathrooms for homeless individuals includes the fact that cities do not adequately publicize their availability, often failing to provide a centralized list of bathrooms they maintain.” It also found that cities don’t provide enough public bathrooms for homeless individuals for two reasons. “First, the public bathrooms are not intended to serve the homeless community alone. Rather, they are designed to serve the public at large. Second...the presence or availability of a bathroom does not reflect whether the bathroom is accessible to homeless individuals. The mere existence of a public restroom does not necessarily mean that the restroom is appropriately accessible to people experiencing homelessness.”

The article notes the importance of considering potential barriers that publicly maintained bathrooms may present for homeless individuals, including:

- Not being open twenty-four hours per day and seven days a week;
- Closing during particular seasons;
- Not being clean and sanitary or providing an ability to wash one’s hands;
- Not being strategically located;
- Being located in an area where anti-homeless laws are enforced;
- Being hard to find due to an absence of signage;
- Having physical security on site;
- Being located in a building that requires identification to enter; and,
- Requiring a fee for entry or being located in a facility that requires the same.

The article notes, “These barriers are not an exhaustive list. For homeless individuals reticent to leave their possessions unattended, another potential barrier might include whether the bathroom, or building where the bathroom is located, allows for a homeless person to bring their belongings inside. Yet another barrier could be the amount of foot traffic nearby because homeless individuals with mental health concerns could be uncomfortable near crowds. It is difficult to anticipate what may serve as a barrier for each individual, but the nine potential barriers listed above can at least be ameliorated by a city through strategic bathroom design and implementation....”

The article reports that 98% of Los Angeles’s 264 bathrooms have restricted hours. In San Jose 43% of bathrooms are located in buildings or facilities that required a fee or membership for entry. In 87% of San Francisco’s public bathrooms, the hours are restricted. In San Diego, until recently, almost all of the city’s public bathrooms closed at night. “Before the city’s recent hepatitis A outbreak, the city maintained only two 24-hour public bathrooms. After the outbreak, it began leaving many of its public bathrooms open all day and started installing new ones. As of September 15, 2017, the city was keeping sixty-eight bathrooms open twenty-four hours per day.

The article noted that, “cities’ inability to provide information or records on basic questions of accessibility demonstrates two things. First, it suggests that cities actually know very little and keep poor records about the public bathrooms they maintain. Second, it becomes clear that the maintenance and operations of public bathrooms do not properly account for the needs of homeless individuals. Accounting for accessibility in addition to availability is

critical when assessing cities' provision of public bathrooms for their homeless community. When a city like Los Angeles maintains four overnight bathrooms for its 33,138 homeless residents, it is difficult to view the situation as anything other than governmental malfeasance...

“By failing to provide adequate access to public bathrooms, governments ensure that homeless individuals do so in a manner that threatens their health and the health of others...A recent hepatitis A outbreak underscores the health risks associated with poor access to public bathrooms and proper hygiene. According to the Centers for Disease Control and Prevention (“CDC”), individuals who were most significantly impacted by the outbreak included drug users and homeless people. In addition to experiencing higher rates of drug use, homeless individuals are at a greater risk of contracting hepatitis A because of poor personal hygiene and a lack of sanitation. San Diego was heavily impacted by the hepatitis A outbreak. The city observed 592 cases of the infection resulting in twenty deaths. The outbreak in San Diego and other parts of California was the “largest person-to-person hepatitis A outbreak in the United States since the hepatitis A vaccine became available in 1996.”

“To quell the outbreak, the state administered 203,850 vaccinations. Yet the outbreak was avoidable. Government officials knew that in addition to increased health care access and proper vaccination, the spread of hepatitis A could be prevented through access to bathrooms and sensible harm reduction policies, such as the provision of clean needles. San Diego was acutely aware of the need to provide bathrooms to their homeless communities for some time. In 2000, a grand jury issued the first of four reports alerting the city to its shortage of bathrooms for the homeless population. The grand jury report in 2010 explicitly stated that San Diego was at risk of an illness outbreak due to unsanitary conditions among its homeless population. The history of San Diego's failure to install public bathrooms is long. The city responded to the outbreak by providing more access to bathrooms, but there are still too few and, for those impacted by the hepatitis A outbreak, it was too late...

“The most obvious and direct solution to the shortage of accessible public bathrooms would be to increase the supply by building additional bathrooms and eliminating barriers to existing public bathrooms. Public bathrooms are an important part of ensuring that a city is accessible, healthy, and inclusive. The installation of additional public bathrooms would also serve the community at large and not just homeless individuals. Many groups will benefit from increased toilet access, including the elderly, children, individuals with disabilities, pregnant women, people with particular medical conditions, joggers and bikers, and tourists.

“Unfortunately, many cities have come to ignore the benefits, as well as the necessity, of public bathrooms and treat them as expensive nuisances. Government actors and the public at large complain that public bathrooms cannot be maintained properly and are used for criminal activity. The typical response to these challenges is to shutter the bathroom. To homeless advocates, as well others organizing around bathroom accessibility, this response is confounding. The proper response to these challenges is to target the problem, not the service. If a bathroom becomes dirty, it must be cleaned, not closed. If it is misused, then alter the design or provision of the service to protect against the misuse. Many public goods, such as parks or buses, pose maintenance problems and are misused, but the government does not stop providing the critical service—it simply responds to the problem.

“One city that has had success with responding to the challenges of public bathroom provision and improving availability and accessibility of bathrooms is Portland, Oregon. Through environmental design, Portland created a bathroom that addresses many of the problems other cities cite when refusing to provide bathrooms. The bathroom, called the ‘Portland Loo,’ is designed to be inexpensive, safe, sanitary, and accessible. The Portland Loos are made of graffiti-resistant steel and have sinks outside so individuals are less likely to shower in them. The outside walls feature slats at the top and bottom that allow security or law enforcement to determine if there is more than one person inside. Finally, the bathrooms discourage intravenous drug use by utilizing light blue lighting that makes finding a vein difficult.

“Portland Loos have been so successful in addressing the concerns cities have about maintaining public restrooms that cities around the country and in Canada have purchased and installed them. On the other hand, it should be noted that some of these design features contribute to the stigmatization of the homeless community. While they may be important to ensure the success of public bathrooms, they also highlight the lack of additional critical resources, such as showers or safe injection facilities.

“Some cities have tackled the issues of availability and accessibility at the same time by bringing portable toilets in and out of areas where homeless communities congregate. A number of cities including San Francisco, Los Angeles, Sacramento, Denver, and Miami have implemented the initiatives, typically called ‘Pit Stop.’ The bathrooms, which are hauled in daily or every weekday, are usually maintained by an attendant. Some sites also have receptacles for dog waste and used needles. Additionally, the sites have, at times, been used to conduct outreach and connect homeless individuals with services.” (Citations omitted.)

- 6) **Sacramento Report.** At least one city in California has already complied with some of the provisions of this bill. In March of 2018, staff at the City of Sacramento produced a report evaluating the public’s access to restrooms and developing a plan to improve access. Staff was requested to identify the current inventory of public restrooms and the service gaps. The report provided an inventory and map of all existing restrooms open to the public in the City, the location of planned new restrooms, and short and long-term recommendations to improve public restroom access. It identified restrooms open 24/7 and those with varying operational hours.
- 7) **Policy Considerations.** The Committee may wish to consider the following:
 - a) **Scope of Inventories.** This bill directs local agencies to “complete an inventory of public restrooms that are available to the homeless population in their respective jurisdictions for use during the COVID-19 state of emergency.” It could prove difficult if not impossible for a city or county to provide this information for restrooms the agency does not own or operate itself, such as restrooms inside private businesses. The author may wish to consider clarifying that the inventory is limited to restrooms the city or county owns and maintains.

In addition, some jurisdictions have closed restrooms under their control during the state of emergency and there is no predictable end date to the emergency. The author may wish to consider whether the inventory should include restrooms available during the state of

emergency, restrooms available before or after the emergency, or restrooms available at the time the inventory is conducted.

- b) **Contents of Inventories.** The contents of the required inventories are relatively limited. Given the barriers and solutions identified in the article referenced above, the author may wish to consider if additional information – such as hours of operation, maintenance practices, the presence of security, or required use fees – should be collected in the inventories.
 - c) **Use of Inventories.** It is not clear to what use the required inventories would eventually be put. Should local jurisdictions disseminate maps to homeless individuals? Should the inventories be made available to local agencies that provide homeless services? Should the maps be posted online so that homeless service providers have ready access to them? The author may wish to specify this going forward.
 - d) **Different Reporting Agency?** This bill requires cities and counties to report their findings to OES and requires OES to provide a report to the Legislature. The author may wish to consider whether OES is the agency most suited to this role, or if another entity with responsibilities for public health or homelessness programs would be a better fit for this task. In addition, the bill contains no date by which the report to the Legislature must be submitted. The author may wish to specify this as the bill moves forward.
 - e) **Charter Cities.** This bill does not specify an application to charter cities. The author may wish to consider whether charter cities should be required to comply with the provisions of the bill.
- 8) **Arguments in Support.** The National Association of Social Workers, CA Chapter, writes, “This bill will help the state better understand through empirical data the options that our homeless friends and neighbors have to wash their hands and where they can use the restroom; something that we all do, regardless of housing status.

“The Centers for Disease Control recommends we all wash our hands to help combat and stop the spread of COVID-19 during the pandemic; amongst other health measures such as physical / social distancing and the wearing of face masks to stop droplets from entering the air which can be passed on to other people. However, due to the lockdown closures of businesses and public buildings it has been impossible for our homeless community to follow this crucial recommendation and help stop the spread of COVID-19. We urge the Committee on Local Government to pass Assembly Bill 1017.”

- 9) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

Action Research on Community Health Equity and Stigma (ARCHES) Lab
 Coalition on Homelessness, San Francisco
 Corporation for Supportive Housing (CSH)
 Kingdom Causes INC. Dba City Net

National Association of Social Workers, California Chapter
Women's Empowerment

Opposition

None on file

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